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Young-Geun Jang

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EXAMINER

KIM, WESLEY LEO

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YOUNG-GEUN JANG

Appeal 2009-002468
Application 10/785,264
Technology Center 2600

Decided: December 15, 2009

Before KENNETH W. HAIRSTON, JOSEPH F. RUGGIERO, and
CARL W. WHITEHEAD, JR., *Administrative Patent Judges*.

RUGGIERO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from the Final Rejection of claims 1-10. Claims 11 and 16-18 have been allowed, and claims 12-15 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Rather than reiterate the arguments of Appellant and the Examiner, reference is made to the Brief (filed December 13, 2007), the Answer (mailed March 6, 2008), and the Reply Brief (filed April 29, 2008) for their respective details. Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Appellant's Invention

Appellant's invention relates to a mobile communication system and method for providing a phone number maintaining service which permits a user to continuously use a previously assigned phone number regardless of a change in service provider (*see generally* Spec. 3:28–4:13).

Claim 1 is illustrative of the invention and reads as follows:

1. A mobile communication system for providing a phone number maintaining service capable of allowing a user to continue to use a previously assigned phone number regardless of a change in service provider, the system comprising:

a first mobile switching center (MSC) for receiving a call request signal with calling terminal information and called terminal information, determining an initial service provider of a called terminal from the called terminal information, and transmitting the call request signal to a communication network formed by the determined initial service provider of the called terminal;

a second MSC for determining a changed service provider of the called terminal based on the called terminal information included in the call request signal transmitted from the first MSC, and transmitting the call request signal to a communication network formed by the determined service provider; and

a third MSC for transmitting the call request signal received from the second MSC to the called terminal so that the called terminal can communicate with the calling terminal over a communication network formed by the changed service provider.

The Examiner's Rejection

The Examiner's Answer cites the following prior art references:

Giuhat	US 5,881,145	Mar. 9, 1999
Koster	US 6,240,293 B1	May 29, 2001
Mazzarella	US 2002/0107011 A1	Aug. 8, 2002

Claims 1, 2, 6, and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Koster and Giuhat.

Claims 3-5 and 8-10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Koster and Giuhat, and further in view of Mazzarella.

ISSUE

The pivotal issue before us is whether Appellant has demonstrated that the Examiner erred in determining that the collective teachings of Koster and Giuhat would have suggested the obviousness to the skilled artisan of providing a communication system in which a second mobile switching center (MSC) determines a changed service provider and transmits a request to a third MSC based on a call request transmitted from a first MSC.

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence:

1. Koster discloses (Fig. 1; col. 6, ll. 53-55) a mobile communication system in which the mobile switching center (MSC) 55 of a donor service provider 30 determines a changed service provider of a called terminal and transmits a call request to the network formed by the determined service provider.
2. Koster further discloses (col. 6, ll. 55-57) that the MSC 65 of a ported-to service provider 40 receives the call request from the donor service provider and transmits the call to the network formed by the changed service provider.
3. Koster further discloses (col. 6, ll. 2-3) that the terms “switch” and “MSC” are interchangeably used.
4. Koster further discloses (col. 6, ll. 3-9) that MSCs function to process requests for service from mobile service providers and process call requests to properly route the call paths.
5. Giuhat discloses (Fig. 1; Abstract) that calls to ported directory numbers are routed using the ported directory number as the called party number.
6. Giuhat further discloses (Fig. 2; col. 6, l. 57 to col. 7, l. 54) that an originating call from telephone 34 to the number of a called terminal 82A, which has been ported from the LEC system to the TELCO system, will be intercepted and properly routed to the called terminal 82A using a number portability database.

PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966) (stating that 35 U.S.C. § 103 leads to three basic factual inquiries: the scope and content of the prior art, the differences between the prior art and the claims at issue, and the level of ordinary skill in the art). “[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Furthermore,

“there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness” [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.

KSR Int’l Co. v. Teleflex Inc., 550 U.S. 398, 418 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

ANALYSIS

I. The rejection of claims 1, 2, 6, and 7 based on the combination of Koster and Giuhat.

With respect to the Examiner’s 35 U.S.C. § 103(a) rejection of each of the appealed independent claims 1 and 6 based on the combination of Koster and Giuhat, Appellant’s arguments assert a failure to set forth a *prima facie* case of obviousness since all of the claim limitations are not taught or

suggested by the applied prior art references. Appellant's arguments (App. Br. 9-10; Reply Br. 1-2) focus on the alleged deficiency of Koster in disclosing a second mobile switching center (MSC) which determines a changed service provider based on information included in a call request transmitted from a first MSC.

Appellant's arguments are not persuasive of any error in the Examiner's stated position since the Examiner has relied upon Giuhat to address any deficiency of Koster in explicitly disclosing that an originating call is routed to the second MSC (donor provider 30) based on a determination of an initial service provider of a called terminal. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986); *In re Keller*, 642 F.2d 413, 426 (CCPA 1981).

As explained by the Examiner (Ans. 4-5), Giuhat discloses (FF 5) that calls to ported directory numbers are routed using the ported directory number as the called party number. As illustrated in Giuhat's Figure 2 illustration, and described beginning at column 6, line 57 of Giuhat, an originating call from telephone 34 to the number of a called terminal 82A, which has been ported from the LEC system to the TELCO system, will be intercepted and properly routed to the called terminal 82A using a number portability database (FF 6). Further, although the various network nodes in Giuhat are identified as Service Switching Points (SSPs), we agree with the Examiner that Koster provides evidence (FFs 3, 4) that an ordinarily skilled artisan would recognize and appreciate that the switching points in Giuhat,

which process call requests and properly route calls, would correspond to the claimed MSCs.

For the above reasons, since it is our opinion that the Examiner has established a prima facie case of obviousness which has not been overcome by any convincing arguments from Appellant, the Examiner's 35 U.S.C. § 103(a) rejection of independent claims 1 and 6, as well as dependent claims 2 and 7, not separately argued by Appellant, is sustained.¹

II. The rejection of claims 3-5 and 8-10 based on the combination of Koster, Giuhat, and Mazzarella.

We also sustain the Examiner's obviousness rejection of dependent claims 3-5 and 8-10. We find no error in the Examiner's application of the service change information teachings of Mazzarella to the combination of Koster and Giuhat. Appellant's arguments (App. Br. 14-16; Reply Br. 1-2) for the dependent claims rely on those made against independent claims 1 and 6, which we have found to be unpersuasive.

CONCLUSION OF LAW

Based on the findings of fact and analysis above, we conclude that Appellant has not shown that the Examiner erred in rejecting appealed claims 1-10 for obviousness under 35 U.S.C. § 103.

¹ Although Appellant argues (App. Br. 15) that the Examiner has not addressed the differing limitations of independent claim 6, Appellant has not identified any such limitations which differ from independent claim 1.

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DECISION

The Examiner's 35 U.S.C. § 103 rejection of appealed claims 1-10 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

babc

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